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EXAMINER

COLLINS, DOLORES R

ART UNIT	PAPER NUMBER
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3711

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 12

Application Number: 09/715,216
Filing Date: November 17, 2000
Appellant(s): SALERNO, JAMES M.

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AUG 26 2003
GROUP 3700

Irving Keschner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/14/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: Whether Claims 8-10 are unpatentable over Hairston et al (5,778,802) in view of Seibert (5,568,666) and Ehrlich (5,060,712) and further in view of Hartwell (4,954,384) **and** whether claim 14 unpatentable over Hairston et al (5,778,802) in view of Seibert (5,568,666) and Ehrlich (5,060,712) and Hartwell (4,954,384) further in view of Sui (5,084,321).

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(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 8-10 & 14 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,778,802	Hairston et al.	7-1998
4,954,384	Hartwell	9-1990
5,060,712	Ehrlich	10-1991
5,568,666	Seibert	10-1996
5,084,321	Sui	1-1992

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hairston in view of Seibert, Ehrlich and further in view of Hartwell.

Hairston et al discloses a Table Cover System.

Regarding claims 8-10

Hairston teaches:

- a table cover(10), with a border (12), having a predetermined size and shape (see figure 1)
- and
- a Velcro fastening member (16) extending continuously around the circumference of the border of the cover (see figure 1).

The table cover of Hairston is inherently capable of use as a gaming cloth or for a gaming table. Moreover, it is inherent that his table could be used for gaming, such as playing cards. Hairston lacks the teaching of a first fastening member being secured to a second fastening member (the second fastening member being attached to the circumference of the table).

Ehrlich discloses a Table Skirt-Attaching Method.

Ehrlich teaches:

- a table with a surface portion (14), a portion (10B) extending perpendicular from the surface and a fastening member (74) secured around the circumference of the table.

The recitation of a "gaming table" is deemed to be intended use rather than structure, and new use does not have patentable weight if structure is known. However, if for purposes of argument "gaming table" were deemed to have weight, then it would have been obvious to use the table of Ehrlich for gaming such as playing cards to make the table the table more versatile.

Hairston fails to explicitly teach that his table cover is a gaming cloth (with gaming symbols) or for a gaming table. The patent to Seibert discloses a Gaming Table Cloth. Seibert teaches the application of a gel-dye mixture 'in conjunction with a selected silkscreen' to facilitate designs on his table cloth (col. 2, lines 43-49). Seibert further teaches the application of a specific gum to his silkscreen that closes the pores of the textile in 'a pattern of the desired design' (col. 2, lines 49-50). It would be obvious in view of Seibert to modify the table covering of Hairston and make the 'desired design' gaming symbols that are applicable to specific games (as required) to extend its' functionality.

The patent to Hartwell discloses a Food Rack Cover. Hartwell is used to show (see figure 4) that the teaching of a first fastening member (52) being secured to a second fastening member (47) (the second fastening member being attached to the circumference of the Rack/object(40) (or table) being covered) is known. It would have been obvious in view of Hartwell to attach the fitted fabric cover (50) of Hairston directly to the table edge using continuous Velcro around the table edge for adequate security of the cover.

2. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 8 above, and further in view of Sui.

Sui discloses a Disposable Table Cloth.

Sui teaches:

- a fabric table cloth (1) having a predetermined shape and size with a fastening member (21) secured to the bottom surface of the border/tab (2) (see figure 1);
 - a border (2) which extends continuously around the circumference of the table cloth (see figures 1-5);
 - a tablecloth (1) with flaps (see figures 1-5)
- and
- a tablecloth (1) with Velcro Members (see figure 1A reference character "21").

It would have been obvious to use the design with flap portions in the cover of Hairston, as taught by Sui, in order to offer flexibility, versatility and ease of use when covering the game table.

(11) Response to Argument

Appellant argues that Hairston et al fails to teach a table cover with gaming symbols/markings.

Examiner argues that Hairston fails to explicitly teach that his table cover is a gaming cloth (with gaming symbols) or for a gaming table. The reliance for this teaching is in the patent to Seibert, which discloses a Gaming Table Cloth. Seibert teaches the application of a gel-dye mixture 'in conjunction with a selected silkscreen' to facilitate designs on his table cloth (col. 2, lines 43-49). Seibert further teaches the application of a specific gum to his silkscreen that closes the pores of the textile in 'a pattern of the desired design' (col. 2, lines 49-50). It would be obvious in view of Seibert to modify the table covering of Hairston and provide the 'desired design' gaming symbols that are applicable to specific games (as required) to extend its' functionality.

Appellant argues that claim 8 sets forth specific physical characteristics.

Examiner contends that the physical characteristics set forth in claim 8 are rendered obvious by Seibert's teaching of the use of woven fabric/material (col.3, lines 5-12) and that it would be obvious to provide this material in the cover of Harrison in order to enhance that quality and durability of his table cover.

Appellant argues that Hartwell fails to teach that one fastener member is attached to the border portion itself.

Examiner contends that the patent to Hairston in further view of Hartwell is used to illustrate that this teaching is known in the art and/or would present little or no difficulty to one of ordinary skill. Hartwell clearly teaches this limitation (see figure 4 , "47" and "52" & col. 2, lines 30-38).

Finally, appellant argues that the references used are essentially not analogous. This argument is not understood since the references used are all covering means and table systems with covering means.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Examiner D. Collins

August 21, 2003

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